

1 In 2008, petitioner filed a second petition in this Court
2 challenging his 2002 conviction. Case No. CV 08-5985-SJO(AJW). That
3 petition was dismissed as successive.

4 The present petition was filed on June 5, 2012. Like the
5 petitions previously filed by petitioner, this petition challenges the
6 validity of petitioner's 2002 conviction and sentence in the Los
7 Angeles County Superior Court. [Petition at 2].

8 A federal court must dismiss a second or successive petition that
9 raises the same grounds as a prior petition. 28 U.S.C. § 2244(b)(1). A
10 federal court must also dismiss a second or successive petition raising
11 a new ground unless the petitioner can show that (1) the claim rests on
12 a new, retroactive, constitutional right or (2) the factual basis of
13 the claim was not previously discoverable through due diligence, and
14 those new facts establish by clear and convincing evidence that but for
15 the constitutional error, no reasonable factfinder would have found the
16 applicant guilty of the underlying offense. 28 U.S.C. §
17 2244(b)(2)(A)-(B). It is not the district court, however, that decides
18 whether a second or successive petition may be pursued. Rather,
19 "[b]efore a second or successive application permitted by this section
20 is filed in the district court, the applicant shall move in the
21 appropriate court of appeals for an order authorizing the district
22 court to consider the application." 28 U.S.C. § 2244(b)(3)(A); see
23 Felker v. Turpin, 518 U.S. 651, 656-657 (1996). Absent authorization
24 from the court of appeals, this court lacks jurisdiction over this
25 second or successive petition. Greenawalt v. Stewart, 105 F.3d 1268,
26 1277 (9th Cir.), cert. denied, 519 U.S. 1102 (1997).

27 Because petitioner has not obtained leave from the Court of
28 Appeals to file a successive petition, this court lacks jurisdiction to

1 consider it. Accordingly, the petition for a writ of habeas corpus is
2 dismissed for lack of jurisdiction.

3 **June 13, 2012.**

4 Dated: _____

S. James Otero

S. James Otero
United States District Judge

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 SYLVESTER FLOYD,)
12)
13 Petitioner,) Case No. CV 12-4930-SJO(AJW)
14 vs.)
15 R.L. GOWER, Warden,) JUDGMENT
16 Respondent.)
_____)

17 It is hereby adjudged that the petition for a writ of habeas
18 corpus is dismissed for lack of jurisdiction.
19

20 Dated: _____
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22 _____
23 S. James Otero
24 United States District Judge
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